



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Dover Municipal Employees Association

Complainant

v.

City of Dover

Respondent

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Case No: G-0040-1

Decision No. 2007-016

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Dover Municipal Employees Association (hereinafter "the Association") filed an unfair labor practice complaint on December 26, 2006 alleging that the City of Dover (hereinafter "the City") committed unfair labor practices in violation of RSA 273-A:5 (a), (g) and (h), by failing to pay step increases. The Association claims payment of the step increases is required pursuant to a properly approved evergreen clause. As remedies, the Association requests that the PELRB (1) order the City to pay the raises in conformance with the collective bargaining agreement and the statute; and (2) grant such other relief as it deems just and equitable.

The City filed its answer denying the Association's charge on January 11, 2007. The City asserts that by its terms the parties' collective bargaining agreement does not provide for step increases after June 30, 2005 and the City Council was not adequately warned that in the absence of a successor agreement the City would incur the cost of annual step increases. The City requests that the PELRB deny the Association's requests for relief.

The undersigned hearing officer conducted a pre-hearing conference on January 29, 2007 at the PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Association: Emmanuel Krasner, Esq.

For the City: Mark T. Broth, Esq.

ISSUE PRESENTED FOR BOARD REVIEW

Did the City Council ratify the so-called evergreen clause contained in Article XXII, Section 1 of the parties' collective bargaining agreement and, if so, are the involved employees entitled to a step increase under Article VI, Section 2.2.1?

WITNESSES

For the Association:

1. Christopher Parker, Association President
2. Thomas Clark
3. Paul Beecher

For the City:

1. J. Michael Joyal, City Manager

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Collective Bargaining Agreement 2002-2005

For the Association:

1. Budget for the City of Dover for FY 2005-2006
2. Budget for the City of Dover for FY 2006-2007
3. Dover City Charter
4. Budget documents showing payments and pay scales for different bargaining units in the City
5. Budget work sheets showing pay increases for employees
6. Budget comparisons from fiscal years 2005, 2006, 2007

For the City:

1. Minutes of City Councils Meetings
2. Documents submitted to the City Council

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. The City has withdrawn its claims that this matter should, in the first instance, be submitted to the grievance procedure, including final and binding arbitration.
2. The parties shall forthwith email to the PELRB dates upon which they are available for hearing during the time period between February 9, 2007 and March 9, 2007.
3. The Association's Motion for Testimony by Telephone is denied. However, the Association may submit the testimony of Paul Beecher by trial deposition in transcript form. It is not necessary for the parties to conduct this trial deposition face to face with Mr. Beecher. It is acceptable for counsel to remain in New Hampshire, gather at one office with a reporter, and conduct the trial deposition by telephone. The parties should strive to complete this process before the hearing date but, if necessary, the record will remain open for a reasonable amount of time, to be determined at hearing, in order to allow the parties to complete and submit the trial deposition transcript of Mr. Beecher.
4. The parties' representatives shall meet, or otherwise confer, on or before February 15, 2007, and attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.

5. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before February 15, 2007, in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at the time written submissions are filed, or least five (5) days prior to the date of the hearing, as the case may be.

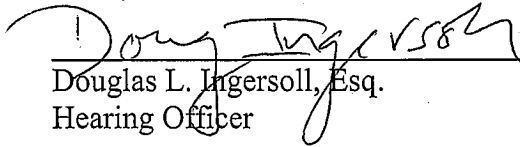
6. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

7. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

8. A new hearing date will be established by subsequent notice.

So ordered.

January 31, 2007.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:
Emmanuel Krasner, Esq.
Mark T. Broth, Esq.